

EXHIBIT F

Johnson City Energy Authority (Brightridge)

vs.


United Telephone Southeast

Deposition of:

Andrew Chong

December 01, 2022

Vol 01

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Andrew Chong
December 01, 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE, TENNESSEE

CASE NO.: 2:20-cv-00030

JOHNSON CITY ENERGY AUTHORITY,
D/B/A BRIGHTBRIDGE,

Plaintiff and Counter-Defendant,

vs.

UNITED TELEPHONE SOUTHEAST, LLC,
D/B/A CENTURYLINK,

Defendant and Counter-Plaintiff.

DEPOSITION OF

ANDREW CHONG

Pages 1 through 195

Thursday, December 1, 2022
9:28 a.m. - 3:21 p.m.

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
200 South Orange Avenue, Suite 2900
Orlando, Florida 32801

Stenographically Reported By:
Alison Hawk, RPR

Job No.: 285861

Andrew Chong
December 01, 2022

<div>Page 2</div> <div>1 APPEARANCES:</div> <div>2 On behalf of Plaintiff:</div> <div>3 Hunter, Smith & Davis, LLP</div> <div>4 100 Med Tech Parkway, Suite 110</div> <div>5 Johnson City, Tennessee 37604</div> <div>6 423-283-6300</div> <div>7 BY: Stephen M. Darden, Esquire</div> <div>8 sdarden@hdsdlaw.com</div> <div>9 On behalf of Defendant:</div> <div>10 Baker Donelson</div> <div>11 602 Sevier Street, Suite 300</div> <div>12 Johnson City, Tennessee 37604</div> <div>13 423-928-0181</div> <div>14 BY: Gary L. Edwards, II, Esquire</div> <div>15 gedwards@bakerdonelson.com</div> <div>16</div> <div>17 ALSO PRESENT VIA ZOOM: William Bovender, BrightRidge</div> <div>18 Joseph Harvey, BrightRidge</div> <div>19 Jeff Dykes, BrightRidge</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	<div>Page 4</div> <div>I N D E X</div> <div>(Continued)</div> <div>1</div> <div>2</div> <div>3 15 Bates BR000389-000391 Make Ready - 159</div> <div>4 16 Bates BR000392-BR000400 12-21-18 164</div> <div>5 Transfer Request</div> <div>6 17 Bates BR000415-BR000416; BR000429 166</div> <div>7 18 Make Ready - 02-19-2019</div> <div>8 Bates BR000401-BR000414 Make Ready - 166</div> <div>9 02-19-2019</div> <div>10 19 Bates BR000379-BR000380 Make Ready - 168</div> <div>11 02-19-2019</div> <div>12 20 Bates BR000417-BR000427 Transfer 169</div> <div>13 Request - 02-20-2019</div> <div>14 21 Bates BR000430-BR000443 Transfer 169</div> <div>15 Request - 02-20-2019</div> <div>16 22 Bates BR000000142-BR000000143 170</div> <div>17 03-01-2019 Letter to Andrew Ice</div> <div>18</div> <div>19 23 Disclosure - Andrew Chong 59</div> <div>20 24 1980 Agreement BVU and United 145</div> <div>21 Inter-mountain Telephone</div> <div>22 25 Amendment No. Three - 1980 Agreement 152</div> <div>23 BVU and United Inter-mountain</div> <div>24 Telephone</div> <div>25 26 Bates CL00487-CL00496 CenturyLink's 106</div> <div>Supplemental Document Production</div> <div>27 28 Complaint for Declaratory Judgment 178</div> <div>28 29 CenturyLink's Responsive Pleadings 181</div> <div>29 30 Brightspeed Job Description 50</div> <div>30 (Not received/attached herein.)</div> <div>31 (STENOGRAPHER'S NOTE: Exhibits</div> <div>32 attached herein unless noted</div> <div>33 otherwise above.)</div> <div>34</div> <div>35</div>
<div>Page 3</div> <div>I N D E X</div> <div>1 Testimony of ANDREW CHONG</div> <div>2 Direct Examination By Mr. Darden 5</div> <div>3</div> <div>4 Certificate of Oath 194</div> <div>5 Certificate of Reporter 195</div> <div>6</div> <div>7 EXHIBIT DESCRIPTION PAGE</div> <div>8 1 1980 Agreement 116</div> <div>9 2 Amendment No. One 133</div> <div>10 3 Amendment No. Two 133</div> <div>11 4 Amendment No. Three 133</div> <div>12 5 Amendment No. Four 133</div> <div>13 6 Amendment No. Five 133</div> <div>14 7 Bates BR00000012- BR00000013 and 71</div> <div>15 BR00000013 - BR00000014) Email Chain</div> <div>16 8 Re: Joint Use Make-Ready Discussions 82</div> <div>17 Bates BR00000003-BR00000005 Email</div> <div>18 Chain</div> <div>19 9 Bates BR00000040-BR00000041 November 90</div> <div>20 26, 2018, Letter from S. Evans</div> <div>21 10 Bates BR00000347-BR00000360 100</div> <div>22 Make-Ready Requests</div> <div>23 11 Bates BR00000457 12-18-2018 Letter to 187</div> <div>24 Andrew Ice from Stacy Evans</div> <div>25 12 Bates BR0000446-BR0000453 Transfer 153</div> <div>Request - 12-21-2018</div> <div>13</div> <div>14 13 Bates BR0000444-BR0000445 Make Ready - 156</div> <div>15 12-21-2018</div> <div>16 14 Bates BR0000455-BR0000462 Transfer 157</div> <div>17 Request - 12-21-2018</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	<div>Page 5</div> <div>1 The following proceedings began at 9:28 a.m.:</div> <div>2 STENOGRAPHER: Please raise your right</div> <div>3 hand.</div> <div>4 Do you swear or affirm the testimony you</div> <div>5 are about to give will be the truth, the whole</div> <div>6 truth, and nothing but the truth?</div> <div>7 THE WITNESS: Yes.</div> <div>8 ANDREW CHONG,</div> <div>9 having been first duly sworn or affirmed, as</div> <div>10 hereinafter certified, testified as follows:</div> <div>11 DIRECT EXAMINATION</div> <div>12 BY MR. DARDEN:</div> <div>13 Q Good morning, again, Mr. Chong. As you</div> <div>14 know, my name is Steve Darden. I am one of the</div> <div>15 attorneys representing BrightRidge in the lawsuit</div> <div>16 with CenturyLink. You know from our preliminaries</div> <div>17 just, sort of, the conversations in advance.</div> <div>18 Mr. Edwards and I know each another. We practice</div> <div>19 law in the same town. Here we are in Orlando,</div> <div>20 Florida, to take your deposition, correct?</div> <div>21 A Correct.</div> <div>22 Q Are you doing okay today?</div> <div>23 A Yes, sir.</div> <div>24 Q All right. Would you please state your</div> <div>25 full name for the record?</div>

<p style="text-align: right;">Page 66</p> <p>1 Q Do you have any idea when the company that 2 used to be known as United Inter-Mountain Telephone 3 Company began offering bright -- Internet service of 4 any nature? 5 A I don't know the timing on it. 6 Q So you wouldn't know when it went from 7 copper to dial-up or any other technology that 8 required a different type of plant, correct? 9 A Correct. 10 Q Do you know when my client began being 11 known as the Johnson City Energy Authority? 12 A No. 13 Q So you don't know when it began providing 14 Internet service, correct? 15 A Correct. 16 Q Are you aware of other companies in the 17 northeast Tennessee area who have attached their 18 Internet lines in the 4-foot telephone zone? 19 A No. 20 Q So if I told you that a company known as 21 BTES did so, would that be information that you 22 didn't previously have? 23 A That's correct. 24 Q If I told you the company known as BVU did 25 so, would that also be information that you didn't</p>	<p style="text-align: right;">Page 68</p> <p>1 Q Okay. And how about the make-ready 2 procedures and requirements for attachments? 3 A Can you repeat that? 4 Q Do you know -- do you have information 5 about the make-ready procedures and requirements for 6 attachments in the telephone zone of poles owned by 7 Brightspeed in the BrightRidge territory? 8 A I'm not sure I'm interpreting your 9 question properly, so can you rephrase? 10 Q Okay. Sure. Regarding the make-ready 11 procedures -- let's just talk about that. 12 Regarding the make-ready procedures in the 13 BrightRidge territory. 14 A Okay. 15 Q Okay. I'm talking about poles owned by 16 Brightspeed. 17 A Okay. 18 Q Do you know what those make-ready 19 procedures are there? 20 A Oh, okay. So they would need to apply 21 to -- through the inbound program to Brightspeed for 22 permission to attach in the communications space. 23 Q Very good. And do you know who the 24 vendors are who perform the make-ready tasks? 25 A Make-ready engineering or make-ready</p>
<p style="text-align: right;">Page 67</p> <p>1 previously have? 2 A Correct. 3 Q Do you know -- are you familiar with the 4 history of and the current pricing for fees charged 5 for attachments in the 4-foot telephone zone on 6 BrightRidge-owned poles? 7 A I have no idea. 8 Q Do you know what your company charges for 9 attachment rates? 10 A No. 11 Q Do you know the history of those rates? 12 A No. 13 Q So if you were called on to testify about 14 those things at trial, you'd have to learn them 15 between now and the trial, correct? 16 A Correct. 17 Q Do you have information about the specific 18 make-ready procedures and requirements for 19 attachments in the telephone zone of poles owned by 20 BrightRidge -- owned by -- excuse me, Brightspeed in 21 the BrightRidge territory, as well as the make-ready 22 costs that are to be paid by BrightRidge? 23 A Make-ready costs, no, it's on a 24 case-by-case basis. Our vendor will provide that -- 25 the costs.</p>	<p style="text-align: right;">Page 69</p> <p>1 construction? 2 Q I'm talking about the contractors who 3 work -- who actually do the rearranging on the 4 poles? 5 A Okay. That's make-ready construction. 6 Q Construction, thank you. 7 A In the Tennessee area, I would have to see 8 who is the current contractor in that area. 9 Q Okay. Can you name one? 10 A We have Lamberts we use, I think Star is 11 another one. I know Lamberts is all of North 12 Carolina. I don't know who is the contractor for 13 Tennessee. 14 Q Okay. Are you in the position to offer an 15 opinion or testimony about damages that your company 16 has incurred? 17 A No. 18 Q Do you know anything about NESC 19 requirements for attachments in the telephone zone 20 of poles owned by Brightspeed in the BrightRidge 21 territory? 22 A Yes. 23 Q What do you know? 24 A That NESC, I think, is 32 ruling, and I 25 refer to my cheat sheet every time, and I have to,</p>

<p style="text-align: right;">Page 142</p> <p>1 A Yes.</p> <p>2 Q Okay. Now, who typed that?</p> <p>3 A Donald.</p> <p>4 Q Okay. Now, he's talking about a situation</p> <p>5 involving Las Vegas, Nevada power, right?</p> <p>6 A Yes.</p> <p>7 Q And then it says, after the first</p> <p>8 paragraph, it says, "Oregon, Tom went to court."</p> <p>9 Now, is there something missing in that white space</p> <p>10 above that sentence?</p> <p>11 Do you see what I'm talking about?</p> <p>12 A Yeah. Nothing is missing. "Oregon, Tom</p> <p>13 went to court." Tom was the manager before Brian</p> <p>14 Sikes.</p> <p>15 Q Okay. And what's Tom's last name?</p> <p>16 A McGowan. He no longer works for</p> <p>17 CenturyLink.</p> <p>18 Q Tom McGowan?</p> <p>19 A Yeah.</p> <p>20 Q It says, "Tom went to court," et cetera,</p> <p>21 et cetera. And the next to last sentence says</p> <p>22 something that I'm wondering if you have any</p> <p>23 perspective on. It says, "Having the fiber in the</p> <p>24 com space tells me they may be looking to rent it</p> <p>25 out."</p>	<p style="text-align: right;">Page 144</p> <p>1 agreements in the same manner?</p> <p>2 MR. EDWARDS: Objection; hypothetical,</p> <p>3 calls for opinion.</p> <p>4 A I would say no. Each agreement is between</p> <p>5 two parties and it's -- it has to stay between those</p> <p>6 two parties.</p> <p>7 BY MR. DARDEN:</p> <p>8 Q But if the language were the same, would</p> <p>9 you treat one joint use partner one way and another</p> <p>10 joint use partner differently?</p> <p>11 MR. EDWARDS: And my objection is</p> <p>12 continuing.</p> <p>13 A I would say no because that's giving</p> <p>14 preferential treatment. Everybody is treated the</p> <p>15 same way.</p> <p>16 BY MR. DARDEN:</p> <p>17 Q Okay. You're applying the language</p> <p>18 identically?</p> <p>19 A Yes.</p> <p>20 Q All right. Are you familiar with an</p> <p>21 agreement that CenturyLink had with a company known</p> <p>22 as BVU?</p> <p>23 A No.</p> <p>24 Q Have you ever seen the joint use pole</p> <p>25 agreement between BVU and CenturyLink?</p>
<p style="text-align: right;">Page 143</p> <p>1 "Having the fiber in the com space tells</p> <p>2 me they may be looking to rent it out." What's</p> <p>3 being alluded to there? Do you have any idea?</p> <p>4 A No, that's Donny's opinion. I think what</p> <p>5 he's saying is that if the fiber is in the com</p> <p>6 space, then whoever is placing that fiber is going</p> <p>7 to lease it out to another company like Comcast or</p> <p>8 Charter or whoever, to lease the fibers, the dark</p> <p>9 fibers.</p> <p>10 Q Okay. Or you think that's what he means?</p> <p>11 A I think that's what he means.</p> <p>12 Q Well, assuming that is what he means,</p> <p>13 what's the significance of that, how does that</p> <p>14 matter with regard to the interpretation of the 1980</p> <p>15 joint use pole agreement?</p> <p>16 A I don't know if it has any bearing on the</p> <p>17 joint use of the 1980 agreement.</p> <p>18 Q Okay. So, Mr. Chong, if CenturyLink had</p> <p>19 two identically situated parties and both were</p> <p>20 parties to joint use agreements that had the same</p> <p>21 provisions, okay, different joint use pole</p> <p>22 agreements, but they're the same language.</p> <p>23 Do you follow me?</p> <p>24 A Okay.</p> <p>25 Q Would CenturyLink apply those joint use</p>	<p style="text-align: right;">Page 145</p> <p>1 A No.</p> <p>2 Q All right. Well, let me cure that. I'm</p> <p>3 going to hand you Exhibit 24.</p> <p>4 (Exhibit 24 identified for the record.)</p> <p>5 BY MR. DARDEN:</p> <p>6 Q All right. So I've just handed you</p> <p>7 Exhibit 24, sir, which, if you look at the top,</p> <p>8 indicates that it is a joint use pole agreement</p> <p>9 entered into in 1980 between the Bristol Virginia</p> <p>10 Utilities Board and United Inter-Mountain Telephone</p> <p>11 Company?</p> <p>12 A Correct.</p> <p>13 Q Now, have you ever seen this before?</p> <p>14 A This agreement?</p> <p>15 Q Yes.</p> <p>16 A No.</p> <p>17 Q Does it look to be the same as the</p> <p>18 agreement entered into at the same time between</p> <p>19 Johnson City Power Board and United Inter-Mountain</p> <p>20 Telephone company?</p> <p>21 MR. EDWARDS: I would object, and instruct</p> <p>22 not to answer for reasons previously discussed</p> <p>23 prior to the deposition and emails. We would</p> <p>24 also add the objection there is no foundation</p> <p>25 with this witness related to this agreement.</p>

<p style="text-align: right;">Page 190</p> <p>1 the parties' agreements, and he says it's not 2 relevant. So my question to you -- do you see that, 3 first of all? 4 A Yes, yes. 5 Q So my question to you, sir, is: You've 6 had a chance to review Exhibit 1 multiple times 7 today, and you've done so multiple times today. 8 Do you recall seeing the phrase 9 "fundamental change" in the 1980 agreement? 10 A No. 11 Q Do you recall seeing the phrase 12 "incremental change" in the 1980 agreement? 13 A No. 14 Q To your knowledge, do either phrases 15 appear, "fundamental change" or "incremental 16 change"? 17 A No. 18 Q So that's something that someone has come 19 up with apart from or external to the agreement 20 itself, right? 21 A Okay. 22 Q And by saying "okay," you're saying you 23 agree with that? 24 A Yes. But there's a difference between the 25 two words, right, incremental and fundamental.</p>	<p style="text-align: right;">Page 192</p> <p>1 BY MR. DARDEN: 2 Q What do you understand that means? I 3 would suggest to you what your lawyers are saying, 4 when they crafted this answer, is you look at the 5 language and the wording that's inside that 1980 6 agreement. 7 A All of it as a whole, yes. 8 Q All of it as a whole. Which means 9 incremental change, fundamental change, rental, 10 electric company rental space, telephone company 11 rental space, since they're not within the four 12 corners of that agreement, it's not to be relied 13 upon, right? 14 A That's not my opinion. That's nothing for 15 me to decide or call on. The Court will decide what 16 it is. 17 Q Well, if the Court is looking to the 18 wording of the agreement only, then those words and 19 phrases that don't appear in the agreement won't 20 carry the day, right? 21 A I don't have an opinion on that, I don't 22 know. 23 MR. DARDEN: I tell you what, I think I'm 24 done, but I need just a couple minutes to think 25 about that.</p>
<p style="text-align: right;">Page 191</p> <p>1 Q Right, but neither one of them appear in 2 the 1980 agreement? 3 A Correct. 4 Q And back to art -- Exhibit 29, sir, 5 Paragraph 18, four lines down, it says "In 6 construing that agreement" -- and that means the 7 1980 agreement, right? 8 A Yeah. 9 Q The Court is constrained to looking within 10 the four corners of the 1980 agreement as amended as 11 a whole, right? 12 A Correct. 13 Q And when the Court does that, it will not 14 entertain the word "rental" if it sticks to that, 15 right? 16 MR. EDWARDS: Objection; foundation, calls 17 for speculation. 18 BY MR. DARDEN: 19 Q Well, what do you understand "four corners 20 of the agreement" means? 21 MR. EDWARDS: I'm going to make a 22 continuing objection, seeks into legal 23 conclusion stuff. 24 MR. DARDEN: That's fine. 25</p>	<p style="text-align: right;">Page 193</p> <p>1 (Recess held from 3:18 p.m. to 3:20 p.m.) 2 MR. DARDEN: Ms. Hawk, thank you for your 3 service today. That will conclude my 4 questioning. 5 Mr. Chong, thank you for your presence 6 today, and I wish you and your family happy 7 holidays. 8 THE WITNESS: Thank you. Same to you. 9 MR. DARDEN: Thank you. 10 STENOGRAPHER: Do you want to order the 11 transcript at this time? 12 MR. DARDEN: Yes, please. 13 STENOGRAPHER: Are you going to get a 14 copy? 15 MR. EDWARDS: Yes, I'll take a copy. 16 (Proceedings concluded at 3:21 p.m.) 17 18 19 20 21 22 23 24 25</p>

Andrew Chong
December 01, 2022

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CERTIFICATE OF OATH

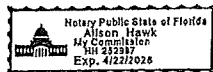
STATE OF FLORIDA
COUNTY OF ORANGE

I, the undersigned authority, certify that
ANDREW CHONG remotely appeared before me and
was duly sworn on the 1st day of December,
2022.

Signed this 15th day of December, 2022.

Alison Hawk

ALISON HAWK, RPR
Notary Public, State of Florida
My Commission No. HH 252987
Expires: 04/22/2026



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CERTIFICATE OF REPORTER

STATE OF FLORIDA
COUNTY OF ORANGE

I, ALISON HAWK, RPR, do hereby certify that I
was authorized to and did stenographically
report the foregoing deposition of ANDREW
CHONG; pages 1 through 193; that a review of
the transcript was not requested; and that the
transcript is a true record of my stenographic
notes.

I FURTHER CERTIFY that I am not a relative,
employee, attorney, or counsel of any of the
parties, nor am I a relative or employee of any
of the parties' attorneys or counsel connected
with the action, nor am I financially
interested in the action.

Dated this 15th day of December, 2022.

Alison Hawk
ALISON HAWK, RPR